

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



DERRICK STALEY and NEVAEH
STALEY,

Plaintiff,

22-CV-945 (JLS)

v.

CITY OF BUFFALO, AHMED ABDO,
individually and in his capacity as a
Buffalo Police Officer, ALLYSA
TABORN, individually and in her
capacity as a Buffalo Police Officer,
ERIC PRENTISS, individually and in
his capacity as a Buffalo Police Officer,
JONATHAN JACKSON, individually
and in his capacity as a Buffalo Police
Officer, CHRISTINA IHLE, individually
and in her capacity as a Buffalo Police
Officer, JOSEPH FISCHER,
individually and in his capacity as a
Detective for the City of Buffalo,
DEBORAH STWORZYDLAK,
individually and in her official capacity
as a caseworker for the Erie County
Child Protective Services,

Defendants.

DECISION AND ORDER

Plaintiff Derrick Staley and Nevaeh Staley brought this lawsuit challenging actions taken by members of the City of Buffalo Police, Child Protective Services, and others, which Plaintiffs allege violated their constitutional rights. *See* Dkt. 7 (Amended Complaint). It is unclear whether Plaintiffs served the Amended Complaint. Plaintiffs also moved to consolidate this matter with another pending

action, *Derrick Staley, et al. v. City of Buffalo, et al.*, 22-CV-00620-JLS. *See* Dkt. 8. Defendants moved to dismiss the Amended Complaint for failure to timely effect service and failure to prosecute. *See* Dkts. 12, 17.

On May 22, 2024, Judge McCarthy issued a Report and Recommendation (“R&R”),¹ recommending that this Court deny Defendants’ motions to dismiss. *See* Dkt. 24, at 7.

Neither party objected to the R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. section 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

Although not required to do so here, this Court nevertheless reviewed Judge McCarthy’s R&R. Based on that review, and absent any objections, the Court accepts the R&R’s recommendation to deny Defendants’ motions to dismiss (Dkts. 12, 17). *See* Dkt. 24, at 7.

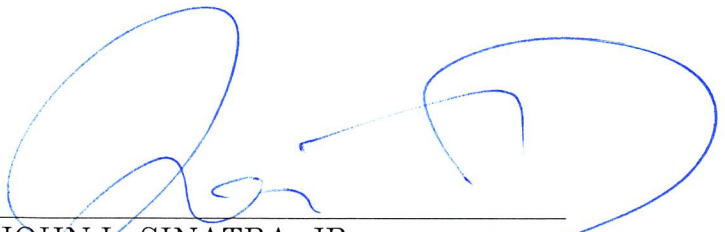
¹ This Court referred the case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. sections 636(b)(1)(A), (B), and (C). Dkt. 9.

CONCLUSION

For the reasons above and in the R&R, the Court DENIES Defendants' motions to dismiss (Dkts. 12, 17). The case is referred back to Judge McCarthy consistent with the January 25, 2024 referral order. Dkt. 9.

SO ORDERED.

Dated: June 13, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE